



General Assembly

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United Nations Commission on International Trade Law Thirty-fifth session

Summary record (partial)* of the 751st meeting

Held at Headquarters, New York, on Tuesday, 25 June 2002, at 10 a.m.

Chairman: Mr. Abascal Zamora (Chairman of the Committee of the Whole) (Mexico)

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Finalization and adoption of the draft UNCITRAL Model Law on International Commercial Conciliation (*continued*)

* No summary record was prepared for the rest of the meeting.

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In the absence of Mr. Joko Smart (Sierra Leone), Mr. Abascal Zamora (Mexico), Chairman of the Committee of the Whole, took the Chair.

The meeting was called to order at 10.15 a.m.

Finalization and adoption of the draft UNCITRAL Model Law on International Commercial Conciliation (continued) (A/CN.9/506, A/CN.9/513 and Add.1-2 and A/CN.9/514; A/CN.9/XXXV/CRP.2)

Draft Guide to Enactment of the UNCITRAL Model Law on International Commercial Conciliation (continued) (A/CN.9/514)

1. **The Chairman** said that he had indicated to the United States delegation that, while its request to eliminate paragraphs 79 and 80 from the draft Guide had not garnered support in the Commission, the UNCITRAL secretariat would, to the extent possible, take its concerns into account. A proposal had also been made by the Working Group on Insolvency Law to insert a paragraph on recourse to conciliation in multiparty situations, the most notable example being insolvency proceedings. The suggestion had met with general support but a final decision had been deferred in order to allow delegations time to consult their experts and Governments.

2. **Mr. de Fontmichel** (France) said that his delegation had expressed reservations the previous day largely because conciliation was not used frequently in French insolvency proceedings, although French law provided for a number of mechanisms in insolvency proceedings which ultimately led to conciliation. While conciliation could be of great value prior to suspension of payments, it was, by its very nature, conducted between two parties and might not lend itself to collective proceedings such as reorganization and liquidation.

3. **Mr. Sigal** (American Bar Association) said that conciliation had been very successfully used in connection with insolvency in the United States of America. It had been of tremendous benefit in complex situations, had brought rapid solutions that might not otherwise have been achieved and had spared the parties considerable expense. Expressing support for the remarks made by the representative of France, he noted that France was a leader in the successful use of conciliation before insolvency and its statutes in that regard were a potential model for other countries. He

agreed that insolvency proceedings already under way could not be overridden by conciliation, which would have to remain subject to the overall scheme of the insolvency proceedings. The draft Guide could be expanded to incorporate the points raised by the French delegation.

4. **Mr. Kovar** (United States of America) said that he had had an opportunity to consult with his authorities and could now confirm that his delegation shared the views expressed at the previous meeting and could support the paragraph.

5. **Mr. Tang Houzhi** (China) expressed support for the secretariat's proposal for a paragraph on conciliation in insolvency proceedings, provided that the parties agreed to engage in them. In China, insolvency proceedings and liquidations were decided by the court, not by arbitration or conciliation. However, conciliation could be used to settle a dispute within the context of insolvency proceedings.

6. **Mr. Marsh** (United Kingdom) said that the reservations expressed by his delegation the previous day might have been misunderstood. In no way had his delegation been suggesting that conciliation was inappropriate in insolvency proceedings — indeed it was often used in the United Kingdom — but rather that dwelling at length on one example might create an imbalance in what was supposed to be a very broad and generic guide.

7. He wondered whether it would be appropriate to include insolvency in footnote 2 of article 1, paragraph (1), on the interpretation of the term "commercial".

8. **The Chairman** said that the debate could not be re-opened in order to amend the footnote. He noted the general support for adding a paragraph in the draft Guide to enactment on conciliation in multiparty situations. As agreed, the UNCITRAL secretariat would be requested to take into account the use of conciliation in the stages prior to the actual insolvency and to indicate that it could not be introduced once insolvency proceedings had been initiated. The secretariat should bear in mind the generic nature of the draft Guide in order to allay the concerns of the United Kingdom delegation. It should indicate the value of conciliation in multiparty situations, giving insolvency as an example or perhaps the construction of large industrial complexes and any other examples Commission members might wish to suggest. As the Commission had decided, the secretariat would be

entrusted with completing the draft Guide and would be open to, but not necessarily bound to follow, delegations' suggestions to that end.

9. **Mr. de Fontmichel** (France) asked where the paragraph on conciliation and insolvency proceedings would be inserted in the draft Guide.

10. **Mr. Sekolec** (Secretary of the Commission) said that it would probably go under article 1, and that elements of the draft Model Law would be reshuffled, as necessary, to incorporate the various points raised.

11. **Mr. Morán** (Spain) said that conciliation would also lend itself to co-insurance by a number of insurance companies, syndicated loans made by several lenders to a common client, regional franchises, and national and, in particular, international distribution agreements, which all established contracts providing for conciliation with the aim of avoiding litigation.

12. **Mr. Tang Houzhi** (China) said that he hoped the secretariat, in drafting the final version, would take into account the flexibility of insolvency proceedings in China, in which the judge could assume responsibility for conciliation proceedings conducted in the court.

13. **Mr. Heger** (Germany) wondered whether problems would arise if the list of examples of multiparty situations was compared to the list contained in footnote 2 on the interpretation of the term "commercial".

14. **The Chairman** said that the secretariat would take note of the concerns expressed by the representative of Germany in drafting the final version of the draft Guide.

Report of the Drafting Group (A/CN.9/XXXV/CRP.2)

15. **The Chairman** invited Commission members to consider the draft Model Law as contained in the report of the drafting group (A/CN.9/XXXV/CRP.2).

16. **Mr. Barsy** (Sudan) drew attention to a problem in the Arabic version, which consistently rendered the English "parties", meaning two or more parties, by the narrower "two parties".

17. **Mr. Sekolec** (Secretary of the Commission) said that while the dual form that existed in Arabic and some other languages had once been favoured, the plural form was now the preferred usage. The

appropriate corrections would be made by the secretariat.

18. **Mr. Heger** (Germany), referring to article 14, said that it was his understanding that *exécutoire* in the French version was supposed to have been changed to *susceptible d'exécution*.

19. **The Chairman** said that the secretariat would take note of the change, and that *ejecutable* in the Spanish text could be similarly changed to read *susceptible de ejecución*.

20. *The report of the drafting group contained in document A/CN.9/XXXV/CRP.2, as orally amended, was approved.*

The discussion covered in the summary record ended at 11 a.m.